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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/328,931 | 06/09/1999 | DAVID CURT MORRIS | TES-7356-003 | 7477 |

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EXAMINER

VERDIER, CHRISTOPHER M

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3745

DATE MAILED: 12/14/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/328,931

Applicant(s)

MORRIS, DAVID CURT

Examiner

Christopher Verdier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 June 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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Continued Prosecution Application

The request filed on October 10, 2001 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/328,931 is acceptable and a CPA has been established. An action on the CPA follows.

Declarations Under CFR 1.132

The Declarations under 37 CFR 1.132 filed October 10, 2001 are insufficient to overcome the rejection of claims 1 and 4 under 35 U.S.C. 102(b) as being anticipated by Wallace; the rejection of claims 1-4 under 35 U.S.C. 102(b) as being anticipated by Wilford; the rejections of claims under 35 U.S.C. 102(b) as being anticipated by Kingsbury; the rejections of claim 1 under 35 U.S.C. 102(b) as being anticipated by Hartt; the rejection of claims 1-3 under 35 U.S.C. 102(b) as being anticipated by Bennie; the rejection of claim under 35 U.S.C. 102(b) as being anticipated by Black; and the rejection of claims 1 and 4 as being anticipated by Kunz; as set forth in the last Office action because:

the declarations refer only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716.

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The declarations do not provide any commentary upon or analysis of the references to Wallace, Wilford, Kingsbury, Hartt, Bennie, Black, or Kunz which were relied in the previous Office action to reject various ones of claims 1-4. Applicant has argued throughout the prosecution history of the instant application that the main issue concerning the above applied references is that they do not disclose a set of blades that sweep out the shape of a disk having the properties of a lifting body when they are rotated rapidly so that as the virtual disk is pushed translationally through the air it generates lift. As has been the examiner's position throughout the prosecution history, the above references all inherently disclose such features. The arguments advanced by the examiner to this effect are repeated later below. Careful review of the declarations by both Richard Miller and Dr. Daniel Schrage indicate that the declarations do not address the above main issue. The declarations merely describe features of the instant application that are disclosed in the specification of the instant application. Both of the declarations appear to support the examiner's position that the helicopters of the aforementioned references generate lift during forward flight; the declaration of Richard Miller (lines 13-14) states that "The standard helicopter works in such a manner that each rotating blade is at an angle of attack relative to the disc swept out by its blades and provides lift"; the declaration of Dr. Daniel Schrage (lines 14-16) states that "The standard helicopter works in such a manner that each rotating blade cuts through the air with a sufficient angle of attack as to provide lift." It is noted that the declaration of Richard Miller does not set forth his credentials.

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The examiner has included excerpts from three separate texts discussing lift generated by airfoils in varying degrees, to support his position. The texts are "Physics, Parts I and II", pages 392-393; "Fluid Mechanics", pages 244-246; and "Fundamentals of Flight", pages 116-130. All of these texts discuss the theory of lift on airfoils.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Arguments Advanced by the Examiner in Previous Office Action

Applicant has argued the claims are patentable because a problem is encountered when rapid forward flight in helicopters is attempted and that the translational movement of the blades through the air interferes with the effect of the rotational movement of the blades, and that during the blades rearward sweep, they do not cut through the air, but rather travel at the same speed as the air passing by or have air pass over them in the same direction as the blade is moving. This argument is not persuasive because, contrary to Applicant's argument, the blades cut through the air during the blades rearward sweep because they are rotating, and hence cut through the air during both the blades forward sweep and the blade rearward sweep. With regard to Applicant's argument that a problem is encountered when rapid forward flight in helicopters is attempted and that the translational movement of the blades through the air interferes with the effect of the rotational movement of the blades, it appears that this problem would also affect Applicant's

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helicopter blades, because they are rotating in the same environment. Therefore, it is not seen how Applicant's blades would not be subject to this problem.

On page 2, lines 24-50 and page 3, lines 1-20, Applicant has provided two figures and has argued that the claims are patentable because in the present invention it is the shape swept out by the blades that has the properties of a lifting body, rather than the cross-section of the individual blade, as in the case of a standard helicopter. This argument is not persuasive. As explained during the interview of February 9, 2001, which is of record, and further reiterated below, the generation of lift in an airfoil is a result of the pressure differential between the upper and lower surfaces of the airfoil. Differences in curvature between the upper and lower surfaces cause such a pressure differential, which normally results in an upwardly directed force. The shape swept out by the blades during rotation clearly has the properties of a lifting body, for the reasons set forth above, and further because if the shape did not have the properties of a lifting body, as Applicant has argued, there would be no lift during blade rotation and forward flight, hence all helicopters using airfoil-shaped blades would drop out of the air because there would be no lift capable of sustaining the helicopter in air. Applicant's figure on page 2 shows a cambered airfoil, and all of the airfoils of Wallace, Wilford, Kingsbury, Hartt, Bennie, Black, and Kunz have at least some degree of camber. Because the airfoils are cambered, they will function according to the exact same principle of operation as Applicant's airfoil.

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On page 3, lines 45-52 and page 4, lines 1-3, Applicant has argued that the PTO has not shown how any reference inherently shows a set of blades sweeping out the shape of a lifting body, and that the PTO should refer to and discuss the surface of revolution of the blade assembly, which the PTO has not done. The examiner respectfully strongly disagrees. The previous Office action clearly set forth all of the elements of the references which read on the claimed elements. In the event that Applicant did not understand the theory of inherency, the applied references all disclose rotatable blades 18 which sweep out the shape of a virtual disk having the properties of a lifting body when rapidly rotated by the mast so that as the disk is pushed translationally through the air, it generates lift. As mentioned above, because the airfoils are cambered, they will function according to the exact same principle of operation as Applicant's airfoil, thus generating lift. Note that anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter or the recognition of inherent properties that may be possessed by the prior art reference. See, Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). A prior art reference anticipates the subject of a claim when the reference discloses every feature of the claimed invention, either explicitly or inherently (see, In re Paulsen, 30 F.3d 1475, 1478-1479, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994), In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990), Hazani v. Int'l Trade Comm'n, 126 F.3d 1473, 1477, 44 USPQ2d 1358, 1361 (Fed. Cir. 1997) and RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Moreover, a reference anticipates a claim if it discloses the

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claimed invention such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention. In re Graves, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995), cert. denied, 116 S. Ct. 1362 (1996), quoting from In re LeGrice, 301 F.2d 929, 936, 133 USPQ 365, 372 (CCPA 1962).

Applicant has argued that in citing Wilford, it is unclear what shape that the blades sweep out and what about the shape gives it the characteristic of being a lifting body. The previous Office action clearly indicated that rotatable blades 10/11 sweep out the shape of a virtual disk. Note that any rotating object will sweep out the shape of a lifting body. With regard to Applicant's argument that the angled surface of Wilford is too sharply angled to be an effective lifting body, this argument is not persuasive because more of an angled surface results in more camber, which equates to greater lift. Because the blades are airfoil-shaped blades 18, lift will be generated as set forth above. With regard to Hartt and Wallace, Applicant has argued that a circular wing and not a virtual disk swept out by the blades is shown. This argument is not persuasive because rotation of the blades or circular wing about a vertical axis causes a virtual disk to be swept out. With regard to Applicant's argument that Kingsbury is directed to a propeller, rather than a set of helicopter blades, note that column 1, lines 9-10 states that the invention relates to a propeller for aircraft. The preamble of claim 1 recites a helicopter blade assembly, which is a quasi-intended use recitation. The propeller of Kingsbury is clearly usable as a propeller for a helicopter. A recitation of the intended use of the claimed invention must result

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in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

With regard to Applicant's argument that Bennie shows a standard helicopter blade set except that there is a mechanism for altering the pitch of the outer portion of the blade, which does not affect the camber and is not a lifting body, these arguments are not persuasive because as set forth in the previous Office action, means 58 control the aerodynamic warping of the blades, which is the same as the camber. Blades 41, 42 are clearly airfoil-shaped, and thus causing lift during rotation of the virtual body. With regard to Applicant's argument that lever 15 of Wilford changes the hub and axis of rotation which is different from camber, lever 15 is moved to tilt the hub and axis of rotation, which will shift the position of outer portion 11 of the blades due to the change in the forces of lift. See page 2, lines 27-31 and 69-75.

Drawings

The drawings are objected to because figures 1-12 are replete with elements that are shown in cross section which must be indicated by hatching. **Correction or proposed correction**

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is required and examiners may no longer permit drawing corrections to be held in abeyance. See 37 C.F.R. 1.121(d).

Specification

The abstract of the disclosure is objected to because it contains the term “is disclosed” (line 7) which is implied and should be deleted. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 4, lines 3 and 4, the terms “substantially” and “gently” are indefinite. It is established patent law that the claims must define the metes and bounds of the invention with a reasonable degree of certainty. In re Venezia, 530 F.2d 956, 958, 189 USPQ 149, 151 (CCPA 1976). When a word of degree such as “substantially” or “gently” is used in a claim, it must be determined whether the underlying specification provides some standard or guideline for measuring that degree, such that a person of ordinary skill in the art would understand what is claimed when the claim is read in light of the specification. Seattle Box Co. V. Industrial Crating

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& Packing Inc., 731 F.2d 818, 826, 221 USPQ 568, 574 (Fed. Cir. 1984). A review of the specification finds no standards or guidelines in Applicants' specification for measuring the scope of the words "substantially" and "gently". Hence, the terms "substantially" and "gently" are indefinite and the metes and bounds of this term cannot be determined with a reasonable degree of certainty.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4, as far as claim 4 is definite, are rejected under 35 U.S.C. 102(b) as being anticipated by Wallace (figure 2). Note the helicopter blade assembly 17 permitting rapid forward flight with separate means 13 for providing a forward impetus, the substantially vertical mast 35, and rotatable blades 18 which sweep out the shape of a virtual disk having the properties of a lifting body when rapidly rotated by the mast so that as the disk is pushed translationally through the air, it generates lift. The virtual disk swept out has a center 19 (figure 4) which is substantially flat at and near the center, and slopes downwardly at the edge of the virtual disk near 18.

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Claims 1-4, as far as claim 4 is definite, are rejected under 35 U.S.C. 102(b) as being anticipated by Wilford (figure 5). Note the helicopter blade assembly 5 permitting rapid forward flight with separate means 3 for providing a forward impetus, the substantially vertical mast (unnumbered, near 4), and rotatable blades 10/11 which sweep out the shape of a virtual disk having the properties of a lifting body when rapidly rotated by the mast so that as the disk is pushed translationally through the air, it generates lift. Note the means for controlling the camber 15. The blade outward tips (near 11) have their camber controlled by downward bending near the outward tips of the blades. The virtual disk swept out has a center 19 (figure 4) which is substantially flat at and near the center, and slopes downwardly at the edge of the virtual disk near 11.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Kingsbury (figures 2-3). Note the helicopter blade assembly (unnumbered) permitting rapid forward flight, the substantially vertical mast 1, and rotatable blades 16, 17 which sweep out the shape of a virtual disk having the properties of a lifting body when rapidly rotated by the mast so that as the disk is pushed translationally through the air, it generates lift. Note the means for controlling the camber 5/20. The blade outward tips (near 16, 17) have their camber controlled by downward bending near the outward tips of the blades.

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Claim 1 is also rejected under 35 U.S.C. 102(b) as being anticipated by Hartt (figure 2). Note the helicopter blade assembly 46 permitting rapid forward flight with separate means 36 for providing a forward impetus, the substantially vertical mast 26, and rotatable blades 46 which sweep out the shape of a virtual disk having the properties of a lifting body when rapidly rotated by the mast so that as the disk is pushed translationally through the air, it generates lift.

Claims 1-3 are also rejected under 35 U.S.C. 102(b) as being anticipated by Bennie. Note the helicopter blade assembly near 41, 42 permitting rapid forward flight, the mast 60 which is considered to be "substantially vertical" because it extends mainly in a vertical direction, and rotatable blades 41, 42 which sweep out the shape of a virtual disk having the properties of a lifting body when rapidly rotated by the mast so that as the disk is pushed translationally through the air, it generates lift. Note the means 58 for controlling the aerodynamic warping of the blades, which is equivalent to controlling the camber. The blade outward tips have their camber controlled by downward bending near the outward tips of the blades.

Claim 1 is also rejected under 35 U.S.C. 102(b) as being anticipated by Black (figures 1-2 and 4). Note the helicopter blade assembly 12 permitting rapid forward flight with separate means 22 for providing a forward impetus, the substantially vertical mast near 86, and rotatable blades 40, 44 which sweep out the shape of a virtual disk having the properties of a lifting body

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when rapidly rotated by the mast so that as the disk is pushed translationally through the air, it generates lift.

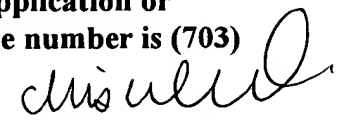
Claims 1 and 4, as far as claim 4 are definite, are also rejected under 35 U.S.C. 102(b) as being anticipated by Kunz (figures 1 and 3). Note the helicopter blade assembly 10 permitting rapid forward flight with separate means 62 for providing a forward impetus, the substantially vertical mast near 32, and rotatable blades 38/42/26' which sweep out the shape of a virtual disk having the properties of a lifting body when rapidly rotated by the mast so that as the disk is pushed translationally through the air, it generates lift. The virtual disk swept out has a center near 32 (figure 3) which is substantially flat at and near the center, and slopes downwardly at the edge of the virtual disk near 26'.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Verdier whose telephone number is (703) 308-2638. The examiner can normally be reached on Monday-Friday from 9:00 a.m. to 5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look, can be reached on (703) 308-1044. The right fax phone number for this Group is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

CV
December 12, 2001


Christopher Verdier
Primary Examiner
Art Unit 3745